



United States
Department of
Agriculture

Farmers
Home
Administration

Washington
D.C.
20250

FmHA AN No. 2489 (1940)

March 7, 1992

SUBJECT: Highly Erodible Land and Wetland Certification

TO: State Directors, District Directors, and County Supervisors

ATTN: Farmer Programs Chiefs

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to provide guidelines for documenting applicant compliance with the provisions of the Food Security Act of 1985 (FSA) and FmHA Instruction 1940-G, Exhibit M. Recent discussions on the National level between the Farmers Home Administration (FmHA), the Agriculture Stabilization and Conservation Service (ASCS), and the Soil Conservation Service (SCS) have revealed inconsistencies between the three agencies in certifying applicant compliance with the provisions of the FSA. These guidelines are intended to ensure consistency between FmHA and those USDA agencies involved in highly erodible land (HEL) and wetland (W) certification and conservation.

COMPARISON WITH PREVIOUS ANs:

This AN revises and replaces AN No. 2258. Language has been added to further clarify when HEL/W determinations and conservation plans are required, and to provide guidance on completing the Form AD-1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification."

IMPLEMENTATION RESPONSIBILITIES:

In accordance with FmHA Instruction 1940-G, Exhibit M, adequate documentation is required to certify applicant compliance with the HEL/W provisions of the FSA prior to approving FmHA assistance.

As of January 1, 1990, all farmers producing an agricultural commodity, as defined in Section 12.2(a)(1) of Subpart A of Part 12 of Subtitle A of Title 7, which is Attachment 1 of Exhibit M, on HEL fields must have had an approved conservation plan in place and should have started implementation of the plan. Additionally, all applicants must complete Form AD-1026, with assistance from ASCS, certifying that they are "actively applying" the

EXPIRATION DATE: October 31, 1992

**FILING INSTRUCTIONS:
Preceding FmHA
Instruction 1940-G**



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conservation plan. ASCS will provide to the applicant an FmHA Form AD-1026A attached to the completed Form AD-1026 to show all tracts containing HEL fields and their conservation plan status.

Tracts containing HEL fields listed on Form AD-1026A will be cross-checked by FmHA with those listed on the conservation plan for accuracy. ASCS records will be considered adequate unless there is a discrepancy in reported tracts from the conservation plan or there is reason to doubt their completeness or accuracy. The applicant's Farm and Home Plan must be reviewed by FmHA to determine if provisions for implementing the required practices are included in the plan, and if a feasible plan of operation can be developed which includes the costs and impact of implementing the conservation plan. Consideration must also be given to practices required in the conservation plan in future years.

Any applicant or borrower leasing farm land upon which FmHA funds will be applied must provide a written lease agreement as part of the complete application, as set forth in FmHA Instruction 1910-A, Section 1910.4 (b)(11). Verbal leases are not acceptable. A producer cannot certify on Form AD-1026 with ASCS unless ASCS is provided written documentation of the lease or sale of the land.

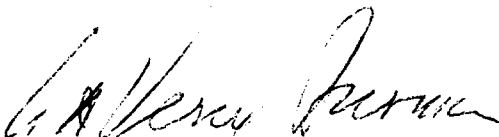
For those applicants with immediate interest in the land to be farmed (i.e., the applicant either owns the land or has signed a lease agreement at the time of application), ASCS will review the completed Form AD-1026 to determine if referral to SCS is necessary. If the applicant answers "yes" to questions 10, 11, 12, or 13 on the Form AD-1026, or if no approved conservation plan exists on HEL fields or HEL/W determinations have not been made, ASCS will forward the form to SCS for a review of the tracts of land. SCS will then provide Form SCS-CPA-026, "Highly Erodible Land and Wetland Conservation Determination," to document the presence of HEL or W. THE FORM SCS-CPA-026 WILL BE GENERATED ONLY WHEN ASCS REFERS THE FORM AD-1026 TO SCS FOR AN HEL/W DETERMINATION. Item 5(a) of FmHA Instruction 1940-G, Exhibit M, states that the Form SCS-CPA-026 is not required for subsequent loans after it has been provided for an initial loan unless there is either a change in the property upon which FmHA loan proceeds will be applied or a change in the previous information, such as a change in the status of an exemption. Therefore, the Form SCS-CPA-026 is not required in all cases as long as the borrower's case file contains the form which includes current information regarding the land to be farmed. If additional land is acquired or leased which is not covered on the Form SCS-CPA-026 and the borrower/applicant applies for another loan, then a revised Form SCS-CPA-026 will have to be obtained by the applicant from SCS.

After a Form AD-1026 has been filed, if borrowers/applicants acquire/lease additional farm land or change their operations within the same crop year and have immediate interest in the new and/or existing farm land, ASCS requires that producers sign a revised Form AD-1026 which includes the additional land or the change in operation. If ASCS determines that a HEL/W determination is needed, they will forward the Form AD-1026 to SCS for the required SCS determination(s), and a Form SCS-CPA-026 will be generated. If no new land is acquired, or no change is made in an operation during the crop year, applicants are required to complete a Form AD-1026 only at the time FmHA funds are requested.

Presence of HEL fields to be used for the production of agricultural commodities as defined above requires an approved conservation plan which will be reviewed by FmHA to determine if a feasible plan of operation can be developed which includes the costs and impact of implementing the conservation plan. If the proposed conservation practices are not feasible for loan making purposes, the application will be rejected unless SCS can revise the proposed plan such that a feasible plan of operation can be developed. If HEL fields are not present or agricultural commodities are not to be produced on HEL fields, a conservation plan is not necessary for FSA purposes. Loan assistance will not be provided until this process of documentation is complete.

ASCS and SCS will be spot checking 10 percent and 5 percent of the producers, respectively, for compliance. Their sharing of data and the use of Form AD-1026 will ensure that we are informed in writing of producers not in compliance. SCS will provide FmHA with a report of the annual status reviews, including dates of the spot checks, the borrowers reviewed, and the results of each review. FmHA field officials will, in all routine loan making and supervisory visits, monitor the borrower's progress in meeting the conditions of the plan. The status of the borrower's compliance with the conservation plan will be documented in the running record in the case file. A current copy of the approved conservation plan, signed by the applicant and a SCS representative, will be filed in the SCS office, and will be available for FmHA use at any time. A copy of the plan will no longer be automatically required in the borrower's FmHA file. If FmHA questions borrower compliance with the approved conservation plan, ASCS and SCS will be notified in writing and requested to determine compliance. Borrowers found to be in non-compliance of HEL or W conservation will be considered ineligible for further FmHA assistance until they are brought back into compliance. Additionally, County Supervisors will review all loans made to the borrower that were originally subject to the provisions of Exhibit M to determine if loan proceeds were used for any purpose that contributed to either the excessive erosion of HEL or the conversion of W as defined in Section D of Paragraph 3 of this Exhibit. If it is determined that loan proceeds were used for a prohibited activity, the affected loans will be considered to be in non-monetary default and handled in accordance with FmHA Instruction 1951-S, Paragraph 1951.907(g). A copy of the plan should then be obtained from SCS and placed in the borrower's file in case legal action against the borrower is necessary. ASCS will track those producers in non-compliance.

State personnel with questions regarding this AN should contact Penny R. Lott, Farmer Programs Loan Making Division, at (202) 720-1656 or FTS 720-1656.



LA VERNE AUSMAN
Administrator